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on the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 9 OF THE CONVENTION

Fourteenth periodic reports of States parties due in 1996

Addendum

SWAZILAND*

[1 March 1996]

I. GENERAL INFORMATION

1. The Kingdom of Swaziland, with an area of just over 17,000 square kilometres, is the smallest country in the southern hemisphere. It is bordered by Mozambique in the east and South Africa in the north, west and south.

2. The people are of Nguni descent having emigrated from central Africa many centuries ago and eventually, during the mid-eighteenth century, settled in an area which is now Swaziland. The latest available figures reveal a population of around 851,000, based on projections from the 1986 census, of whom

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* The present document contains the fourth to fourteenth periodic reports consolidated in one document which were due on 6 May 1976, 1978, 1980, 1982, 1984, 1986, 1988, 1990, 1992, 1994 and 1996. For the third periodic report on Swaziland, and the summary records of the meetings at which the Committee considered it, see documents CERD/C/R.70/Add.10 and CERD/C/SR.205 and SR.921.

90 per cent are Swazis, 8 per cent Zulus and Tongas and 2 per cent Europeans. Swaziland is predominantly Christian with 60 per cent of the population Christian and the remaining 40 per cent belonging to traditional African religions.

3. Swaziland has been a monarchy ever since the Nguni people entered the territory. The present monarch, King Mswati III ascended the throne in 1986 at the age of 18, succeeding his father, King Sobhuza II. Swaziland is a former British protectorate, a status it retained until independence in 1968. Even after independence the monarch remained firmly entrenched, promoting the country's stability and peaceful climate while ensuring that the cultural heritage is safeguarded as Swaziland develops.

4. Until 1973, Swaziland's Constitution was Westminster based. This was revoked and replaced with a system designed to facilitate the practice of both Western and traditional styles of government. This structure, which incorporates the system known as Tinkhundla, provides for the people to elect their representatives from a choice of candidates to be their parliamentary representatives for a specific constituency. Executive authority is vested in the King who delegates as necessary and consults with the Cabinet, which is headed by the Prime Minister, and the bicameral parliament. These aspects comprise the Western style of government.

5. Swaziland's legal system operates on a dual basis comprising both traditional Swazi national courts as well as constitutional courts. The latter practise Roman-Dutch law and comprise a High Court with various magistrates courts and an industrial court. These are headed by a Chief Justice under whom fall judges and magistrates.

6. It is important to note that the constitutional courts have the final ruling in the event of any contention arising between the two legal systems.

II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

7. The Race Relations Act 6/1962 was enacted to prevent and discourage any act of discrimination by any person against any other group of persons based solely on race or colour. Section 3 provides that, "During the hours that any premises are open in respect of business carried on therein the proprietor of such business shall not practise any racial discrimination or cause or permit it to be practised by any of his servants or agents on such premises". In the event of a contravention of the above section the law requires that a complaint be lodged with the District Commissioner/Regional Administrator and such a complaint shall be in writing.

8. Section 4 (3) calls upon the above-referred to authority to cause a copy of the complaint to be served on the respondent and call the parties to a meeting in an effort to promote reconciliation. If reconciliation fails, the District Commissioner/Regional Administrator shall issue a certificate stating in detail the nature of the complaint and that efforts towards reconciliation have failed. On receipt of such certificate the court has to consider the record of the proceedings from which such further complaint arose and after hearing such additional evidence as it or the parties may deem necessary, and if the court finds that the respondent has contravened the provisions of

section 3, it may either caution or impose a fine not exceeding 100 emalangeni for a first offender. Second offenders may be subject to a caution or a fine not exceeding 200 emalangeni.

9. The court may further endorse any licence held by the respondent and further notify in writing the licensing authority of the fact and date of endorsement. If a court orders a fine to be paid by the respondent and such is not paid within the time stipulated by it, such order can be enforced as if it were a civil judgement given in such a court in favour of Government. The respondent has a right to appeal to the High Court against a judgement of a court and the decision of the High Court on any appeal shall be final.

10. Section 12 further creates certain offenses which may be committed within scheduled premises. It states as follows:

> "Any person shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred Emalangeni or imprisonment for a term not exceeding one year or both, if he -
>
> (a) Acts in any scheduled premises in an insulting, provocative or offensive manner towards any person of a different race or colour; or
>
> (b) Incites or endeavours to incite any other person to act in such a manner as aforesaid"

Contravention of this section was normal in the years following independence when Europeans would use racial slurs against Africans. The courts dealt with such incidents in a manner that eventually stopped it completely. Due to the presence of this act discrimination on the grounds of race or colour is now unheard of in Swaziland. It should be noted that Cabinet has since decided to effect some amendments to this piece of legislation in order to address new forms of discrimination and for it to address all the relevant issues addressed by the Convention.

11. There are also supplementary pieces of legislation such as the Employment Act of 1980 which addresses past discrimination in the employment sector.

Section 29 states:

> "No employer shall, in any contract of employment between himself and an employee discriminate against any person or between employers on grounds of race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status".

The provisions of the above section are not only in conformity with aspects of the International Convention on the Elimination of All Forms of Racial Discrimination but also of the International Labour Organization Discrimination (Employment and Occupation) Convention No. 111 which Swaziland ratified in 1981. The above-quoted section clearly eradicates discrimination in the workplace.

12. Swaziland also has the Citizenship Act of 1992 amending the 1982 Citizenship Act which, some alleged, had discriminatory aspects. The 1992 Act was enacted to take care of the concerns of those affected. Article 4 of the 1982 Act defines "natural born citizens" as follows: "A person born, whether before or after the commencement of this Act and whether in or outside Swaziland, is a citizen of Swaziland if, according to customary law, he is by birth a member of a Swazi community subsisting within the Kingdom of Swaziland". It further states: "A person born, whether before or after the commencement of this Act whether in or outside Swaziland, is a citizen of Swaziland if by birth he is a descendant of an ancestor who is a citizen of Swaziland".

13. The new citizenship law passed in November 1992 removed many ambiguities relating to Swazi citizenship and enabled non-ethic Swazis to enjoy a measure of benefits, i.e. obtaining passports and citizenship documents. The Government hosts about 7,000 ethnic Swazis from the former homeland of KwaZulu in South Africa and these are treated as virtually indistinguishable from local Swazis.

14. Swaziland's treatment of refugees is considered good by the United Nations High Commissioner for Refugees (UNHCR) as well as the various non-governmental organizations involved in the care of these groups. Largely under UNHCR auspices more than 35,000 Mozambican refugees returned home by the end of 1994 and several hundred refugees have been registered in Swaziland.

15. Right of association. The Industrial Relations Act of 1980 affirms the right of trade unions to organize and associate freely. It permits workers in all sectors of the economy, including the public sector, to join unions. Unions operate independently of government or political control. The main trade union is the Swaziland Federation of Trade Unions (SFTU). The Swaziland Federation of Labour, a breakaway from the SFTU, gained recognition from Government in 1994.

16. The Government has taken the necessary steps to ratify the Protocol relating to the Status of Refugees, the Convention on the Political Rights of Women, the Convention on the Nationality of Married Women and the Convention on the Rights of the Child.

17. His Majesty King Mswati III, when opening Parliament, pointed out that a committee would be appointed to look into the drafting of the country's constitution. The drafting of the constitution, which will start shortly, will address adequately all aspects of the Convention left out by the present legislations.